

SENATE BILL NO. 338

INTRODUCED BY J. ESSMANN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO FAMILY LAW PROCEEDINGS TO PROTECT THE PRIVACY OF CHILDREN IN COURT RECORDS; ESTABLISHING METHODS OF AUTHORIZED ACCESS TO FAMILY LAW RECORDS; ESTABLISHING A CATEGORY OF RECORDS TO WHICH REMOTE ELECTRONIC ACCESS IS PROHIBITED; REQUIRING PARENTING PLANS TO BE FILED SEPARATELY FROM OTHER DOCUMENTS; CLARIFYING LANGUAGE RELATED TO SETTLEMENT AGREEMENTS; AMENDING SECTIONS 40-4-103, 40-4-105, 40-4-130, 40-4-201, 40-4-205, 40-4-206, 40-4-207, 40-4-209, 40-4-213, 40-4-214, 40-4-215, 40-4-216, 40-4-218, 40-4-220, 40-4-221, AND 40-4-234, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Right of children to privacy -- findings. The legislature finds that:

(1) children are particularly vulnerable in proceedings conducted under this title because, while they are powerfully affected by court proceedings that determine their parenting, protection, support, and medical care, they are rarely independently represented by counsel and are not parties to these proceedings;

(2) courts deciding issues affecting children in proceedings under this title have access to information of an extremely personal and private nature about the children and the individuals the children love and depend on and that information becomes part of court records;

(3) traditionally, and under current law, there are categories of court records that may be accessed by the public and there are other records that are restricted from public access by statute, court rule, or court order, particularly in proceedings under this title;

(4) growing reliance on computer technology generally and on the internet specifically has made internet publication of electronic court records a reality;

(5) while the legislature recognizes there are public policy interests that are served by remote electronic access to court records, such as transparency, public confidence, and effective judicial administration, unrestricted internet publication of court records in electronic form that contain information about children is detrimental to children, may easily result in the children's loss of control of that information for the remainder of

1 their lives, and may expose them to dangers such as child predators, identity theft, or medical identity theft;

2 (6) when court records that contain child-related information are not sealed, restricting public examination
3 of the court records to courthouse access provides a reasonable, but limited, form of public access while
4 protecting children;

5 (7) restricting the remote electronic access to otherwise-public family law court records while permitting
6 courthouse access to the records preserves the public's constitutional right to know while protecting the privacy
7 rights of children by preventing the unrestricted internet publication of information about children and safeguarding
8 private and sensitive information about children; and

9 (8) legislatively mandated protection of children's privacy rights ensures that access to court records
10 serves appropriate public functions, including not only privacy and security, but also the sound and efficient
11 administration of justice.

12
13 **NEW SECTION. Section 2. Protection of children's right of privacy -- policy.** It is the policy of the
14 state of Montana to:

15 (1) recognize the constitutionally protected right of privacy of children in proceedings under this title while
16 balancing that right against the public's constitutional right to know;

17 (2) recognize that it is fundamental to an individual's constitutional right of privacy to have the right to
18 control the dissemination of information about one's self;

19 (3) recognize that there are different categories of court records, those court records that are
20 appropriately sealed from access pursuant to statute, court rule, or court order and those court records that the
21 public may inspect and obtain copies of as provided by law;

22 (4) establish restrictions on the remote electronic access to certain court records in proceedings under
23 this title in order to protect children's privacy and safety; and

24 (5) prevent the unrestricted internet publication of private and sensitive information about children.

25
26 **NEW SECTION. Section 3. Protection of children's right of privacy -- authorized access to family**
27 **law records -- filing disclosure requirement.** (1) Unless further restricted by statute, court rule, or court order,
28 access to court records that have not been sealed by the court and that contain child-related information filed in
29 cases under this title is authorized only as follows:

30 (a) the parties to a case and their attorneys must have both courthouse access and remote electronic

1 access, when available, to the court records filed in the case;

2 (b) the child support enforcement division of the department of public health and human services must
3 have both courthouse access and remote electronic access, when available, to the court records for purposes
4 of administering the child support enforcement program;

5 (c) a person other than a person listed in subsection (1)(a) or (1)(b) may have:

6 (i) only courthouse access to the records. Access must be for the purposes of inspecting and obtaining
7 a copy of the information, as provided by Montana law.

8 (ii) remote electronic access, when available, to only the following records:

9 (A) litigant or party indexes to cases filed with the court;

10 (B) listings of new case filings, including the names of adult parties;

11 (C) a register of actions showing what documents have been filed in a case; and

12 (D) calendars or dockets of court proceedings, including the case number and caption, date and time
13 of the hearing, and location of the hearing.

14 (2) All documents filed by a party in a proceeding under this title must disclose in the caption whether
15 the document contains child-related information.

16 (3) Court records in electronic form that are limited to courthouse access must be available for
17 examination in electronic or paper form at the court facility. Copies of court records in electronic form that are
18 limited to courthouse access may be made available only in paper form.

19 (4) This section does not prevent a court from entering an order, upon motion and finding of good cause,
20 permitting access to a sealed or otherwise restricted record on a case-by-case basis.

21
22 **NEW SECTION. Section 4. Definitions -- access to family law records.** As used in [sections 1
23 through 4], the following definitions apply:

24 (1) "Child-related information" means information about the identity, support, medical support, parenting,
25 protection, or custody of a minor child.

26 (2) (a) "Court record" means:

27 (i) any document, information, or other thing that is collected, received, or maintained in the official case
28 file by a court or clerk of court in connection with a judicial proceeding;

29 (ii) any index, calendar, docket, register of actions, official record of the proceedings, order, decree,
30 judgment, or minutes and any information in a case management system created by or prepared by the court or

1 clerk of court that is related to a judicial proceeding; and

2 (iii) information maintained by the court or clerk of court pertaining to the administration of the office of
3 the court or clerk of court and not associated with any particular case.

4 (b) The term does not include:

5 (i) notes, drafts, and other judicial work products prepared by a judge or for a judge by court staff or
6 individuals working for the judge related to cases before the court when not included in the official case file;

7 (ii) other noncourt records maintained by the public official who also serves as clerk of court;

8 (iii) information gathered, maintained, or stored by a governmental agency or other entity to which the
9 court has access but that is not part of the court record as defined in subsection (2)(a)(i).

10 (3) "Courthouse access" means access to court records only at a court facility in the jurisdiction.

11 (4) "Electronic form" means:

12 (a) electronic representations of text or graphic documents;

13 (b) an electronic image, including a video image, of a document, exhibit, or other thing;

14 (c) data in the fields or files of an electronic database; or

15 (d) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a
16 transcript of an event can be prepared.

17 (5) "Remote electronic access" means the ability to electronically search, inspect, or copy information
18 in a court record without the need to physically visit the court facility where the court record is maintained.

19
20 **Section 5.** Section 40-4-103, MCA, is amended to read:

21 **"40-4-103. Application of Montana Rules of Civil Procedure.** (1) Except for proceedings under the
22 Uniform Child Custody Jurisdiction and Enforcement Act, the Montana Rules of Civil Procedure apply to all
23 proceedings under this chapter, except as otherwise provided in this chapter.

24 (2) A proceeding for dissolution of marriage or legal separation must be entitled, "In re the Marriage
25 of..... and.....". A parenting or support proceeding must be entitled, "In re the (parenting) (support) of the
26 minor children of, Petitioner, and, Respondent".

27 (3) The initial pleading in all proceedings under this chapter must be denominated a petition. A
28 responsive pleading must be denominated a response. Other pleadings, and all pleadings in other matters under
29 this chapter, must be denominated as provided in the Montana Rules of Civil Procedure.

30 (4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, may not be awarded to one of the parties but must provide that it affects the status previously existing between the parties in the manner decreed."

Section 6. Section 40-4-105, MCA, is amended to read:

"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably broken and must set forth:

(a) the age, occupation, and residence of each party and the party's length of residence in this state;
(b) the date of the marriage and the place at which it was registered;
(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) there is serious marital discord that adversely affects the attitude of one or both of the parties ~~towards~~ toward the marriage; and there is no reasonable prospect of reconciliation;

(d) whether there are children of the marriage and whether the wife is pregnant. If there are children of the marriage, the petition must refer to a separately filed, confidential document that sets forth the names, dates of birth, ages, and addresses of all living children of the marriage. The petition may not contain any personally identifiable information about the children. and whether the wife is pregnant;

(e) any arrangements as to support of the children and maintenance of a spouse; and

~~(f) a proposed parenting plan, if applicable; and~~

~~(g)(f)~~ the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

[(6) The social security number, if known, of a person subject to a decree of dissolution or a support

order must be recorded in the records relating to the matter. At the request of a person subject to a decree of dissolution or a support order, the recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(7) If there are minor children of the marriage, a proposed parenting plan must be filed separately from the petition. A proposed parenting plan is subject to the access restriction provisions of [section 3]. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 7. Section 40-4-130, MCA, is amended to read:

"40-4-130. Summary dissolution -- conditions necessary at commencement of proceedings. A marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136 if all of the following conditions exist on the date the proceeding is commenced:

(1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both parties agree that the marriage should be dissolved.

(3) The wife is not pregnant and:

(a) there are no children from the relationship born before or during the marriage or adopted by the parties during the marriage; or

(b) the parties have executed an agreed-upon parenting plan, subject to the access restriction provisions of [section 3], and the child support and medical support have been determined by judicial or administrative order for all children from the relationship born before or during the marriage or adopted by the parties during the marriage.

(4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

(b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by either party if the lease does not include an option to purchase and if it terminates within 1 year from the date of the filing of the petition.

(5) There are no unpaid, unsecured obligations in excess of \$8,000 incurred by either or both of the parties after the date of their marriage.

(6) The total fair market value of assets, excluding secured obligations, is less than \$25,000.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of

liabilities and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any right to maintenance.

(9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the dissolution.

(10) The parties have read and state that they understand the contents of the summary dissolution brochure provided for in 40-4-136.

(11) The parties desire that the court dissolve the marriage."

Section 8. Section 40-4-201, MCA, is amended to read:

"40-4-201. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them; and maintenance of either of them; and. In cases in which children are involved, the parties may enter into a written parenting plan, as required by 40-4-234, containing provisions for the support, parenting, and parental contact with their children. In cases in which children are involved, the separation agreement may contain a parenting plan as required in 40-4-234. A proposed parenting plan must be filed separately from the separation agreement and is subject to the access restriction provisions of [section 3].

(2) Subject to subsection (7), in a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, ~~except those providing for the support, parenting, and parental contact with children,~~ are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request that the parties submit a revised separation agreement or it may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms must be set forth in the decree of dissolution or legal separation and the parties ordered to perform them; or

(b) if the separation agreement provides that its terms may not be set forth in the decree, the decree

1 must identify the separation agreement and state that the court has found the terms not unconscionable.

2 (5) Terms of the agreement set forth in the decree are enforceable by all remedies available for
3 enforcement of a judgment, including contempt, and are enforceable as contract terms.

4 (6) Except as provided in subsection (7) ~~and except for terms concerning the support, parenting, or~~
5 ~~parental contact with the children~~, the decree may expressly preclude or limit modification of terms set forth in
6 the decree if provided for in the separation agreement. Otherwise, terms of a separation agreement set forth in
7 the decree are automatically modified by modification of the decree.

8 (7) The decree may be modified, as provided in 40-4-251 through 40-4-258, for failure to disclose assets
9 and liabilities."

10
11 **Section 9.** Section 40-4-205, MCA, is amended to read:

12 **"40-4-205. Guardian ad litem.** (1) The court may appoint a guardian ad litem to represent the interests
13 of a minor dependent child with respect to the child's support, parenting, and parental contact. The guardian ad
14 litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health
15 and human services or any of its staff may not be appointed for this purpose.

16 (2) The guardian ad litem has the following general duties:

17 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related
18 to the child's support, parenting, and parental contact;

19 (b) to interview or observe the child who is the subject of the proceeding;

20 (c) to make written reports to the court concerning the child's support, parenting, and parental contact;

21 (d) to appear and participate in all proceedings to the degree necessary to adequately represent the child
22 and make recommendations to the court concerning the child's support, parenting, and parental contact; and

23 (e) to perform other duties as directed by the court.

24 (3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services,
25 and school records pertaining to the child and the child's siblings and parents or caretakers.

26 (4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order
27 must be made against either or both parents, except that if the responsible party is indigent, the costs must be
28 waived.

29 (5) All reports from a guardian ad litem are subject to the access restriction provisions of [section 3]."
30

1 **Section 10.** Section 40-4-206, MCA, is amended to read:

2 **"40-4-206. Payment of maintenance or support to court -- handling fee of clerk.** (1) Except as
3 provided in subsection (4), upon its own motion or upon motion of either party, the court may order at any time
4 that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the
5 person entitled to receive the payments. An order issued under this section is subject to the access restriction
6 provisions of [section 3].

7 (2) The clerk of the district court shall maintain records of payments received by the clerk listing the
8 amount of payments, the date payments are required to be made, and the names and addresses of the parties
9 affected by the order. The clerk may charge the payor a handling fee of \$2 a payment, which must be in addition
10 to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general
11 fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid
12 into that fund.

13 (3) The parties affected by the order shall inform the clerk of the district court of any change of address
14 or of other condition that may affect the administration of the order.

15 (4) When the department of public health and human services is providing services under Title IV-D of
16 the Social Security Act or when income withholding is in effect in an order issued or modified after October 1,
17 1998, payment of support must be made through the department for distribution to the person, organization, or
18 agency entitled to the payment."
19

20 **Section 11.** Section 40-4-207, MCA, is amended to read:

21 **"40-4-207. Assignments.** The court may order the person obligated to pay support or maintenance to
22 make an assignment of a part of his the person's periodic earnings or trust income to the person entitled to
23 receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks
24 after service of notice upon ~~him of notice~~ the employer, trustee, or payor that it has been made. The payor shall
25 withhold from the earnings or trust income payable to the person obligated to support the amount specified in the
26 assignment and shall transmit the payments to the person specified in the order. The payor may deduct from
27 each payment a sum not exceeding \$1 as reimbursement for costs. An employer ~~shall~~ may not discharge or
28 otherwise discipline an employee as a result of a wage or salary assignment authorized by this section. An order
29 issued under this section is subject to the access restriction provisions of [section 3]."
30

1 **Section 12.** Section 40-4-209, MCA, is amended to read:

2 **"40-4-209. Security or guaranty to secure support.** (1) Upon a verified application that is made by a
3 person authorized to enforce or collect a child support obligation or by the department of public health and human
4 services and that shows that a person obligated to pay child support or maintenance pursuant to court or
5 administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may
6 direct the obligated person to appear and show cause why an order should not be entered ordering that the
7 obligated person post bond, give a mortgage, or provide other security or guaranty for the payment of the
8 delinquency.

9 (2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the
10 obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court
11 may enter an order requiring the obligated person to post bond, give a mortgage, or provide security or guaranty
12 for so long as there is a support delinquency.

13 (3) The bond or other security may be in an amount up to the total support due for a 2-year period and
14 must be approved by the court. The bond must include the name and address of the issuer. Any person issuing
15 a bond under this section must, if the bond is canceled, notify the court and the person or public agency entitled
16 to receive payments under the support order.

17 (4) If the person obligated to pay child support or maintenance fails to make payments as required by
18 the court or administrative order, the person or public agency entitled to receive payment may recover on the
19 bond or other security. The amount recovered on the bond or other security must first be applied toward
20 satisfaction of any support arrearages.

21 (5) The department of public health and human services shall adopt guidelines that take into account
22 the payment record of the obligated person, the availability of other remedies, and other considerations ~~which~~
23 that it determines to be relevant for determining whether the procedure provided in this section would carry out
24 the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after
25 application of the guidelines the department of public health and human services determines an application for
26 an order requiring security is not appropriate, it may not request the order.

27 (6) All motions, court orders, and other court records concerning children issued under this section are
28 subject to the access restriction provisions of [section 3]."

29
30 **Section 13.** Section 40-4-213, MCA, is amended to read:

1 **"40-4-213. Interim parenting plan.** (1) A party to a parenting proceeding may move for an interim
2 parenting plan. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may adopt
3 an interim parenting plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and
4 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

5 (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any interim parenting plan
6 is vacated unless a parent moves that the proceeding continue as a parenting proceeding and the court finds,
7 after a hearing, that the circumstances of the parents and the best interests of the child require that a parenting
8 plan be adopted. A child support delinquency existing at the time that an interim parenting plan is vacated remains
9 a judgment subject to collection.

10 (3) If a parenting proceeding commenced in the absence of a petition for dissolution of marriage or legal
11 separation is dismissed, any interim parenting plan is vacated. A child support delinquency existing at the time
12 that an interim parenting plan is vacated remains a judgment subject to collection.

13 (4) Adoption of a final parenting plan under 40-4-234 vacates any interim parenting plan adopted under
14 this section. A child support delinquency existing at the time that an interim parenting plan is vacated remains a
15 judgment subject to collection.

16 (5) Motions, affidavits, parenting plans, and orders concerning children issued under this section are
17 subject to the access restriction provisions of [section 3]."

18
19 **Section 14.** Section 40-4-214, MCA, is amended to read:

20 **"40-4-214. Interviews.** (1) The court may interview the child in chambers to ascertain the child's wishes
21 as to residence and parental contact. The court may permit counsel to be present at the interview. The court shall
22 cause a record of the interview to be made and to be part of the record in the case.

23 (2) The court may seek the advice of professional personnel, whether or not employed by the court on
24 a regular basis. The advice given must be in writing and made available by the court to counsel upon request.
25 Counsel may examine as a witness any professional personnel consulted by the court.

26 (3) All interviews and transcripts of interviews of children, professional personnel written reports,
27 professional personnel testimony, and transcripts of testimony are subject to the access restriction provisions of
28 [section 3]."

29
30 **Section 15.** Section 40-4-215, MCA, is amended to read:

1 **"40-4-215. Investigations and reports.** (1) If a parent or a court-appointed third party requests; or if
2 the court finds that a parenting proceeding is contested, the court may order an investigation and report
3 concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other
4 professional considered appropriate by the court. The department of public health and human services may not
5 be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a
6 recipient of financial assistance, as defined in 53-4-201, or a participant in the food stamp program, as defined
7 in 53-2-902, and all reasonable options for payment of the investigation, if conducted by a person not employed
8 by the department, are exhausted. The department may consult with any investigator and share information
9 relevant to the child's best interests. The cost of the investigation and report must be paid according to the final
10 order. The cost of the educational evaluation under subsection (2)(a) must be paid by the state as provided in
11 3-5-901.

12 (2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation
13 and preparation of the report, which may include one or more of the following:

- 14 (a) parenting education;
- 15 (b) mediation pursuant to 40-4-301;
- 16 (c) factfinding by the investigator; and
- 17 (d) psychological evaluation of the parties.

18 (3) In preparing a report concerning a child, the investigator may consult any person who has information
19 about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may
20 refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older,
21 the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who
22 have served the child in the past without obtaining the consent of the persons or entities authorized by law to
23 grant or withhold access to the records. The child's consent must be obtained if the child is 16 years of age or
24 older unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4)
25 are fulfilled, the investigator's report may be received in evidence at the hearing.

26 (4) The court shall mail the investigator's report to counsel and to any party not represented by counsel
27 at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall make
28 available to counsel and to any party not represented by counsel the investigator's file of underlying data and
29 reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection
30 (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the

1 proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party
2 may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included
3 in the court record and may, without objection, be sealed. The results of the investigation and testimony and
4 transcripts of testimony of the investigator and any person the investigator has consulted are subject to the
5 access restriction provisions of [section 3]."
6

7 **Section 16.** Section 40-4-216, MCA, is amended to read:

8 **"40-4-216. Hearings.** (1) Parenting plan proceedings ~~shall~~ must receive priority in being set for hearing.

9 (2) The court may tax as costs the payment of necessary travel and other expenses incurred by any
10 person whose presence at the hearing the court considers necessary to determine the best interest of the child.

11 (3) The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may
12 be detrimental to the child's best interest, the court may exclude the public from a parenting hearing but may
13 admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or
14 research interest in the work of the court.

15 (4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in
16 a parenting proceeding be kept secret to protect the child's welfare, the court may make an appropriate order
17 sealing the record and the record is subject to the access restriction provisions of [section 3]."
18

19 **Section 17.** Section 40-4-218, MCA, is amended to read:

20 **"40-4-218. Judicial supervision.** (1) Except as otherwise agreed by the parties in writing at the time
21 of the custody decree, the custodian may determine the child's upbringing, including the child's education, health
22 care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in
23 the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered
24 or the child's emotional development significantly impaired.

25 (2) If both parents or all contestants agree to the order or if the court finds that in the absence of the
26 order the child's physical health would be endangered or the child's emotional development significantly impaired,
27 the court may order supervised visitation by the noncustodial parent. The court may not order the department of
28 public health and human services to supervise the visitation.

29 (3) All orders issued under this part are subject to the access restriction provisions of [section 3]."
30

1 **Section 18.** Section 40-4-220, MCA, is amended to read:

2 **"40-4-220. Affidavit practice.** (1) Unless the parties agree to an interim parenting plan or an amended
3 parenting plan, the moving party seeking an interim parenting plan or amendment of a final parenting plan shall
4 submit, together with the moving papers, an affidavit setting forth facts supporting the requested plan or
5 amendment and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may
6 file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion
7 is established by the affidavits, based on the best interests of the child, in which case it shall set a date for hearing
8 on an order to show cause why the requested plan or amendment should not be granted.

9 (2) (a) A party seeking an interim parenting plan may request that the court grant a temporary order
10 providing for living arrangements for the child ex parte. The party shall make the request in the moving papers
11 and shall submit an affidavit showing that:

12 (i) no previous parenting plan has been ordered by a court and it would be in the child's best interest
13 under the standards of 40-4-212 if temporary living arrangements for the child were as proposed by the moving
14 party; or

15 (ii) although a previous parenting plan has been ordered, an emergency situation has arisen in the child's
16 present environment that endangers the child's physical, mental, or emotional health and an immediate change
17 in the parenting plan is necessary to protect the child.

18 (b) If the court finds from the affidavits submitted by the moving party that the interim parenting plan
19 proposed by the moving party would be in the child's best interest under the standards of 40-4-212 and that the
20 child's present environment endangers the child's physical, mental, or emotional health and the child would be
21 protected by the interim parenting plan, the court shall make an order implementing the interim parenting plan
22 proposed by the moving party. The court shall require all parties to appear and show cause within 20 days from
23 the execution of the interim parenting plan why the interim parenting plan should not remain in effect until further
24 order of court.

25 (3) Affidavits, motions, and orders issued under this section are subject to the access restriction
26 provisions of [section 3]."

27
28 **Section 19.** Section 40-4-221, MCA, is amended to read:

29 **"40-4-221. Determination of child's care upon death of parent.** (1) Upon the death of a parent, one
30 or more parties named in subsection (2) may request a parenting plan hearing. The surviving parent must be a

party in any proceeding brought under this section.

(2) Upon the death of a parent, any of the following parties may request a parenting plan hearing:

(a) the natural parent;

(b) the surviving spouse of the deceased parent;

(c) a person nominated by the will of the deceased parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) a person who has established with the child a child-parent relationship, as defined in 40-4-211;

(g) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of a parenting plan ~~is~~ are governed by this part and are subject to the access restriction provisions of [section 3]."

Section 20. Section 40-4-234, MCA, is amended to read:

"40-4-234. Final parenting plan criteria. (1) In every dissolution proceeding, proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith, a proposed final plan for parenting the child, which may include the allocation of parenting functions. A final parenting plan must be incorporated into any final decree or amended decree, including cases of dissolution by default. As used in this section, parenting functions means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child, which may include:

(a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) attending to the daily needs of the child, such as feeding, physical care, development, and grooming, supervision, spiritual growth and development, health care, day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;

(d) ensuring the interactions and interrelationship of the child with the child's parents and siblings and with any other person who significantly affects the child's best interest; and

1 (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's
2 developmental level and the family's social and economic circumstances.

3 (2) Based on the best interest of the child, a final parenting plan may include, at a minimum, provisions
4 for:

5 (a) designation of a parent as custodian of the child, solely for the purposes of all other state and federal
6 statutes that require a designation or determination of custody, but the designation may not affect either parent's
7 rights and responsibilities under the parenting plan;

8 (b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

9 (c) a residential schedule specifying the periods of time during which the child will reside with each
10 parent, including provisions for holidays, birthdays of family members, vacations, and other special occasions;

11 (d) finances to provide for the child's needs;

12 (e) any other factors affecting the physical and emotional health and well-being of the child;

13 (f) periodic review of the parenting plan when requested by either parent or the child or when
14 circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment by the
15 child of a certain age or if a change in the child's residence is necessitated;

16 (g) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including contempt
17 of court;

18 (h) allocation of parental decisionmaking authority regarding the child's:

19 (i) education;

20 (ii) spiritual development; and

21 (iii) health care and physical growth;

22 (i) the method by which future disputes concerning the child will be resolved between the parents, other
23 than court action; and

24 (j) the unique circumstances of the child or the family situation that the parents agree will facilitate a
25 meaningful, ongoing relationship between the child and parents.

26 (3) The court may in its discretion order the parties to participate in a dispute resolution process to assist
27 in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute resolution
28 process may include counseling or mediation by a specified person or agency or court action.

29 (4) Each parent may make decisions regarding the day-to-day care and control of the child while the
30 child is residing with that parent, and either parent may make emergency decisions affecting the child's safety

1 or health. When mutual decisionmaking is designated in the parenting plan but cannot be achieved regarding a
2 particular issue, the parents shall make a good faith effort to resolve the issue through any dispute resolution
3 process provided for in the final parenting plan.

4 (5) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under
5 the parenting plan are not affected.

6 (6) At the request of either parent or appropriate party, the court shall order that the parenting plan be
7 sealed except for access by the parents, guardian, or other person having custody of the child.

8 (7) A parenting plan must contain either:

9 (a) the names, dates of birth, ages, and addresses of all living children of the marriage; or

10 (b) a reference to a separately filed, confidential document that sets forth the information required in
11 subsection (7)(a).

12 (8) A parenting plan must be filed as a separate document along with petitions filed under 40-4-211(4)
13 and petitions for declaration of invalidity of marriage.

14 (9) All parenting plans are subject to the access restriction provisions of [section 3]."

15
16 **NEW SECTION. Section 21. Codification instruction.** [Sections 1 through 4] are intended to be
17 codified as an integral part of Title 40, chapter 4, and the provisions of Title 40 apply to [sections 1 through 4].

18
19 **NEW SECTION. Section 22. Retroactive applicability.** [This act] applies retroactively, within the
20 meaning of 1-2-109, to internet access to information subject to the requirements of [sections 1 through 4] that
21 is contained in records filed prior to [the effective date of this act].

22 - END -